

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Sorptive Minerals Institute,

Petitioner

v.

No. 24-1889

Mine Safety and Health
Administration; Secretary of
Labor, United States Department
of Labor,

Respondents

National Stone, Sand & Gravel
Association, et al.,

Petitioner

No. 24-2661

v.

Mine Safety and Health
Administration, et al.

Respondents

Sorptive Minerals Institute and
Blue Mountain Production
Company,

Petitioners

v.

Mine Safety & Health
Administration, et al.

Respondents

No. 24-2663

**Secretary’s Motion for Extension of Time to Respond
to Motion for Leave to Intervene Filed by
the American Thoracic Society**

This case is a challenge to the Mine Safety and Health Administration (“MSHA”) final rule entitled “Lowering Miners’ Exposure to Respirable Crystalline Silica and Improving Respiratory Protection,” 89 Fed. Reg. 28,218 (Apr. 18, 2024) (“Silica Rule”). The Silica Rule became effective on June 17, 2024. The first challenge to the Silica Rule was filed by Petitioner Sorptive Minerals Institute on April 29, 2024. Except for Petitioners’ reply briefs, the case is otherwise fully briefed.

On April 4, 2025, the Court granted Petitioners’ emergency motion for a temporary administrative stay of the Silica Rule. On April 11, 2025, the Court

granted Petitioners' motion to stay the compliance deadlines until the Court completes a substantive review of the petition for review. Also on April 11, 2025, the court granted Petitioners' motion to hold the appeals in abeyance, and directed the parties to file a joint status report by June 10, 2025, regarding the developments in the cases.

On April 14, 2025, the American Thoracic Society filed a motion for leave to intervene ("ATC Motion to Intervene"). *ECF ID 5506393*.

The Secretary's response to ATC's Motion to Intervene is due by April 24, 2025. Pursuant to Federal Rule of Appellate Procedure 26(b), the Secretary respectfully requests a 30-day extension of time, until May 23, 2025, to respond to the ATC's Motion to Intervene. In support of this motion, the Secretary states the following:

1. The Secretary submits that the following reasons constitute good cause for the Secretary's extension request. First, the undersigned counsel was recently assigned primary responsibility for these cases, and entered his formal appearance as counsel of record on April 18, 2025, substituting in as the Secretary's primary counsel of record. This substitution of counsel for the Secretary resulted from unforeseen circumstances, and former counsel is no longer available. Second, the undersigned needs additional time to

become familiar with the more recent developments in the cases. Third, the undersigned counsel has a number of other scheduled pending matters requiring attention.

2. The American Thoracic Society will not be prejudiced by this extension. They have sought to participate in any future briefing, as well as any future oral argument, *ECF ID 5506393 at 20*, but the litigation is now in abeyance. Moreover, the Secretary's proposed response date is May 23, 2025, before the required status update to the Court on June 10, 2025, and thus congruent with the next court deadline and within the period of the Court's stay.

3. The undersigned has conferred with Petitioners' counsel, and Petitioners do not oppose to this motion.

4. The undersigned has conferred with counsel for the United Mine Workers and American Steel Workers, who oppose this motion.

5. The undersigned has attempted to confer with counsel for the American Thoracic Society, but has not heard back from counsel.

Respectfully submitted,

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Counsel also certifies that this motion has been scanned for viruses and is virus-free.

s/ Brad J. Mantel

Certificate of Service

I certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the appellate CM/ECF system on April 18, 2025, and registered users will be served via the CM/ECF system.

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